

Respondent contends Judge Clark erred by finding a 100 percent wage loss. Respondent contends claimant did not make a good faith attempt to find appropriate

employment as only five of the 106 potential employers he contacted were about truck driving, which claimant retains the ability to perform. Respondent requests the Board to impute a post-injury wage for K.S.A. 44-510e's permanent partial general disability formula and to find a 15 percent wage loss. Accordingly, respondent contends the Award should be modified to reflect a 25.5 percent work disability (a permanent partial general disability greater than the functional impairment rating).

Conversely, claimant contends the Award should be affirmed.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes the Award should be affirmed.

The facts are not in dispute. Respondent employed claimant as one of its truck drivers. On March 27, 2002, claimant injured his low back pulling a tarp off a load. Claimant received medical treatment for his low back injury and was ultimately released from treatment with permanent medical restrictions. Claimant contacted respondent about returning to work and was told that he needed to take a Department of Transportation physical, drug test, and orientation before he could resume his employment with respondent.

Respondent's insurance manager, Darrell Garrett, testified, however, that claimant would have been required to lift at least 150 pounds upon returning to work for respondent. There is no evidence that respondent could have accommodated claimant's permanent back injury or that respondent offered claimant such a position. Claimant concluded respondent was not going to accommodate his permanent work restrictions and, consequently, he began to seek other employment.

Claimant lives in Coats, Kansas, which is a rural community of approximately 50 people located southwest of Pratt. As there are few employment opportunities in Coats, claimant has looked for work in the nearby towns of Pratt, Medicine Lodge, Greensburg, Haviland, Preston, Turon, Cunningham, and Kingman. Claimant has not limited his job search to any particular occupation, but he has applied for such jobs as a deliveryman, truck driver, mill operator, farmhand, cashier, and clerk at such places as automobile dealerships, hardware stores, auto parts stores, a body shop, glass company, convenience store, and city, county and state offices, among others.

At claimant's January 2004 regular hearing, he remained unemployed but was continuing to look for work. At that hearing, claimant introduced a list of 97 contacts for employment that he made with potential employers between May 6, 2003, and January 7, 2004. Further, additional contacts were introduced as part of claimant's job search efforts, and claimant looked in the newspaper to find work.

Dr. Philip R. Mills, whom the Judge requested to evaluate claimant for purposes of this claim, diagnosed claimant as having a low back sprain with possible interspinous ligament compression syndrome and bulging discopathy with underlying degenerative disc disease in conjunction with a chronic pain syndrome, all of which was related to claimant's March 2002 accident. Dr. Mills, who was the only doctor to testify in this claim, rated claimant's whole body permanent functional impairment at seven percent, using the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). The doctor concluded claimant should limit his work to the light physical demand level, or no lifting greater than 20 pounds maximum and no lifting or carrying more than 10 pounds frequently.

Dr. Mills reviewed a list prepared by vocational expert Jerry D. Hardin of the work tasks that claimant performed in the 15-year period before his March 2002 accident. According to Dr. Mills, claimant has lost the ability to perform nine of the 25 tasks, or 36 percent.

In the June 3, 2004 Award, Judge Clark found claimant made a good faith effort to find appropriate employment and, therefore, concluded claimant had a 100 percent wage loss for purposes of the permanent partial general disability formula.¹ The Board affirms those findings. Respondent's arguments that claimant has failed to demonstrate a good faith effort to find employment or that he has failed to apply for a sufficient number of truck driving jobs are without merit. Consequently, the June 3, 2004 Award should be affirmed.

The Board adopts the findings and conclusions set forth in the Award to the extent they are consistent with the above.

AWARD

WHEREFORE, the Board affirms the June 3, 2004 Award entered by Judge Clark.

IT IS SO ORDERED.

¹ See K.S.A. 44-510e.

Dated this ____ day of October 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Thomas M. Warner, Jr., Attorney for Claimant
Janell Jenkins Foster, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director